

January 6, 2006

Minerals Management Service  
381 Elden Street, MS 4024  
Herndon, VA 20170-4817

Attention: Rules processing Team (RPT)

Ref: Minerals Management Service Notice of Proposed Rulemaking  
Oil and Gas and Sulfur Operations on the Outer continental shelf  
Plans and Information  
Protection of Marine Mammals and Threatened and Endangered Species  
RIN 1010-AD10  
70 Federal Register 52953-52956 (Sept. 6, 2005)

(By electronic mail, [rules.comments@mms.gov](mailto:rules.comments@mms.gov), and facsimile, 703/787-1093 )

Dear Sir or Madam:

These comments on the above-referenced matter ("Proposed Rules") are submitted on behalf of The Center for Regulatory Effectiveness ("CRE"). As discussed below, the Proposed Rules constitute a new collection of information that must be reviewed and approved by the Office of Management and Budget ("OMB") under the Paper Work Reduction Act ("PRA"), 44 U.S.C. § 3507. Consequently, the Minerals Management Service ("MMS") should comply with the PRA review requirements before MMS goes any further with this rulemaking.

MMS is aware of the PRA requirements governing collection of information that must be reviewed and approved by OMB. CRE will, therefore, not repeat those requirements here. MMS also agrees that the proposed rules are subject to the PRA requirements. 70 FR at 52954, 52955. MMS states that OMB has already approved the Proposed Rules under the PRA:

The proposed revisions to 30 CFR Part 250, subpart B, refer to, but do not change, information collection requirements in current regulations. The rule proposes no new reporting or recordkeeping requirements, and an OMB form 83-I submission to OMB under the PRA is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond.

OMB approved the referenced information collection requirements under OMB control number 1010-0151, expiration 7/31/08.

70 FR at 52955.

CRE disagrees. The Proposed Rules contain new information collection requirements that were not reviewed by and approved by OMB under PRA control number 1010-0151.

This control number merely extends OMB PRA review and approval of rules MMS proposed in 2002, 67 FR 35372 (May 17, 2002), and promulgated as final on August 30, 2005, 70 FR 51478. The Proposed Rules contain new information collection requirements that differ significantly from the already promulgated rules. If they were not different, then MMS would not have to propose them as new rules. MMS has never submitted these new requirements for OMB review and approval under the PRA.

CRE's analysis of the PRA status of the proposed rules is supported by MMS' own analysis when the agency published notice of its proposed extension of the original 2002 OMB approval that is now PRA control number 1010-0151:

MMS proposed a complete revision of the 30 CFR 250, subpart B regulations (67 FR 35372, May 17, 2002), and OMB approved the information collection requirements under control number 1010-0151, expiration June 2005. This submission is a renewal of the information requirements for the rulemaking and is required to prevent the expiration of OMB approval under 1010-0151; the ICR reflects what we expect to be in our final rulemaking, which is in surnaming.

70 FR 35693, 35694 (June 21, 2005).

The final MMS rulemaking, referenced in the above quote, is the rulemaking resulting in the final rules promulgated in 2005.

The many new information collection requirements in the Proposed Rules are obvious when one compares the text of the Proposed Rules (70 FR at 52955-56) with the text of the rules MMS proposed in 2002 (67 FR 35379-35396) and with the text of the final rules MMS promulgated in 2005 (70 FR 51500-51519).

The Proposed Rules unquestionably constitute proposed new information collection requirements that are not covered by OMB PRA control number 1010-0151, and which have never been reviewed or approved by OMB under the PRA.

In conclusion, the Proposed Rules are nothing but a new collection of information. MMS must submit the Proposed Rules to OMB for review and approval under the PRA, and comply with all the other PRA requirements. If the agency does not, then any final rules will be a nullity.

We thank you for the opportunity to submit these comments.

Sincerely yours,

Scott Slaughter  
The Center for Regulatory Effectiveness

cc: David J. Rostker, Policy Analyst, OMB  
Ruth Solomon, Policy Analyst, OMB